

1 THE STATE OF ARIZONA  
2 CITIZENS CLEAN ELECTIONS COMMISSION  
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9 REPORTER'S REVISED TRANSCRIPT OF PUBLIC HEARING  
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15 Phoenix, Arizona

16 November 3, 2005

17 9:30 a.m.  
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21 (Copy)  
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23 Reported By:

24 Angela Furniss Miller, RPR  
25 Certified Reporter (AZ 50127)

1                   A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN  
2                   ELECTIONS COMMISSION, convened at 9:30 a.m. on November  
3                   3, 2005, at the State of Arizona, Clean Elections  
4                   Commission, 1616 W. Adams, Conference Room, Phoenix,  
5                   Arizona, in the presence of the following Board Members:

6                   Ms. Marcia Busching, Phoenix, Chairperson

7                   Ms. Tracey Bardorf, Scottsdale

8                   Mr. Gary Scaramazzo, Page

9                   Ms. Emila Jolley, Yuma

10  
11                   OTHERS PRESENT:

12                   Mr. Todd Lang, Executive Director

13                   Ms. Paula Ortiz, Executive Assistant

14                   Ms. Colleen McGee, Fiscal Service Manager

15                   Ms. Genevra Richardson, Campaign Finance  
16                   Manager

17                   Ms. Diana Varela, Assistant Attorney General

18                   Ms. Nancy Read, Secretary of State's Office

19                   Ms. Barbara Lubin, Clean Elections Institute

20                   Mr. Paul Peterson, OMA

21                   Mr. Gene Lemon, Investigative Consultant

22                   Mr. Doug Ramsey, Clean Elections Institute

23                   Ms. Barbara Klein, League of Women's Voters

24                   Mr. Todd Kittel, Public

25                   Ms. Janna B. Media

                  Ms. Peggy Tommey Hammann

P R O C E E D I N G

CHAIRPERSON BUSCHING: This is the meeting of the Clean Election -- Citizens Clean Elections Commission. It's Thursday, November 3rd, 2005 at 9:30 a.m. at 1616 West Adams, Suite 110, Phoenix, Arizona 85007.

I'm Marcia Busching, the Chairman of the Commission. And I just want to notify everyone that the Commission may vote to go into executive session, which will not be open to the public, for any item listed on the agenda for obtaining legal advice.

All matters on the agenda may be discussed, considered, and are subject to action by the Commission.

I've called the meeting to order, so let's go to Item No. 2, approval of the October 20th, 2005 Commission meeting minutes. They were a Reporter's Transcript of Public Hearing.

Does anyone have any additions or corrections?

MR. LANG: Madame Chair.

CHAIRPERSON BUSCHING: Mr. Lang.

MR. LANG: On Page 8, which is Page 7 -- Commissioner Bardorf, how do you negotiate through those paginations?

1           Anyway, on Page 8 in the middle, you see where  
2           it says, "The Republican caucus of the United States  
3           Senate;" it should say "caucus" but says "congress." It  
4           also says "senate" instead of "house of representative,"  
5           but that was my error, not the reporter's.

6           Then on Page 9, which I guess it's Page 10, in  
7           the middle at the bottom it says Page 9, but right below  
8           Page 10 in the middle, it has me quoted as, "I don't  
9           think so, but" and then the word "if" should be inserted  
10          between "but" and "we".

11          That's all I have.

12          CHAIRPERSON BUSCHING: Okay. Any other  
13          additions or corrections?

14          COMMISSIONER BARDORF: Madame Chair, I move  
15          that we approve the October 20th minutes with the two  
16          changes that Mr. Lang mentioned.

17          CHAIRPERSON BUSCHING: Is there a second?

18          COMMISSIONER JOLLEY: I'll second it.

19          CHAIRPERSON BUSCHING: It's been moved by  
20          Commissioner Bardorf and seconded by Commissioner Jolley  
21          that we approve the October 20th minutes with the  
22          corrections. All in favor say, "aye".

23          (Chorus of ayes.)

24          CHAIRPERSON BUSCHING: Opposed, nay?

25          The Chair votes aye. Motion carries.

1                   Item No. 3 on the agenda, Executive Director's  
2                   report.

3                   MR. LANG: Thank you, Madame Chair. Good  
4                   morning, Commissioners.

5                   You have my report and what I'll do is  
6                   supplement it and update it. The meetings with the  
7                   legislature continue to go well. I've had about a dozen  
8                   meetings either last week, this week, or next week.  
9                   They're always very interesting.

10                  There is some legislation floating out there.  
11                  I've indicated to them that we will not be running a  
12                  bill. But I'm, of course, happy to help any legislators  
13                  with any questions or any assistance they may require  
14                  including drafting anything they like and they will let  
15                  me know.

16                  We currently have 28 -- the report says 27 --  
17                  but we now have 28 participating candidates. Ms.  
18                  Florez, one of the gubernatorial candidates is now  
19                  participating in it.

20                  Our fund balance is \$24.7 million.

21                  You see the voter education update. The  
22                  primary thing is Off Madison Avenue will be presenting  
23                  their 2006 plan on November -- at our next meeting on  
24                  November 18th.

25                  As for sponsorship -- debate sponsorship, we've

1       now received five applications and I've met with some  
2       other interested groups, so we're proceeding there.  
3       Although the deadline has now passed, that's the  
4       traditional deadline that traditionally has past before  
5       we get that, so it's nothing to be worried about but we  
6       do need to keep that moving of course.

7               Our next candidate training is coming up on  
8       November 9th. Due to our current staffing pattern, I  
9       will be helping Genevra with that training. So I'm  
10      looking forward to that.

11             And then we've completed -- you see we've  
12      completed the five-year review update with the help of  
13      Dean Wright. Genevra Richardson did a great job, really  
14      cranked out the report on that and Dean was very  
15      helpful. And we will, I'm sure, we'll hear back from  
16      her shortly. I'm sure they'll have lots of good  
17      suggestions.

18             Staffing. As you know, Autumn has left but the  
19      good news is I've filled the deputy director's position.

20             MS. VARELA: The deputy director?

21             MR. LANG: I'm sorry. That's a -- that's a  
22      shock.

23             The voter education position. In other words,  
24      Genevra's position.

25             COMMISSIONER BARDORF: Autumn's.

1 CHAIRPERSON BUSCHING: Autumn's.

2 MR. LANG: Autumn's position. You're still  
3 here?

4 MS. RICHARDSON: That's a shock here.

5 COMMISSIONER BARDORF: Wow, there's lots going  
6 on today.

7 MR. LANG: I'll try again. I've hired Michael  
8 Becker for the education position and he'll start on  
9 November 7th. I'm very excited to have him. He has a  
10 wonderful resume. He worked as Chief of Staff for  
11 County Supervisor Don Stapley for four years. He worked  
12 on his re-election campaign, so he has the campaign  
13 experience and he has the national experience. He  
14 certainly has worked with constituents and done a lot of  
15 education. Before that he worked for a year with  
16 Congressman John Shadegg and was involved with some  
17 campaign there. Before that, he worked for the Arizona  
18 Republican Party in a fund raising capacity. And he  
19 worked for a congressional -- a member of congress right  
20 out of college. So he has a lot political experience,  
21 fund raising, and most importantly speaking with groups,  
22 working with voters and working with candidates. So,  
23 we're very pleased to have him and I look forward to  
24 working with him.

25 Enforcement. Nothing to add there. I think

1 the report is accurate.

2 And Gene Lemon will be speaking to you today  
3 about some settlement. And I think unless you have  
4 questions, that concludes my report.

5 CHAIRPERSON BUSCHING: Any news on the  
6 administrative assistant position?

7 MR. LANG: They are -- Paula is back there.  
8 She can tell you, but basically they're right in the  
9 middle --

10 MS. ORTIZ: We're in the midst of completing  
11 reviews this week. And we anticipate to have a  
12 selection after references are followed up next week.  
13 So, we hope to have the position filled and the person  
14 naturally can provide a two-week notice to their  
15 employer. Hopefully by Thanksgiving or thereafter. And  
16 we're starting for the AA II position now. Busy year.

17 CHAIRPERSON BUSCHING: And we welcome you back  
18 as well.

19 MS. ORTIZ: Thank you very much.

20 CHAIRPERSON BUSCHING: Any other questions or  
21 comments?

22 COMMISSIONER BARDORF: I saw in your report you  
23 mention the executive director. You're still in the  
24 deciding process, right?

25 MR. LANG: Well, deputy director.



1 COMMISSIONER BARDORF: I'm sorry.

2 MR. LANG: I decided to stay.

3 COMMISSIONER BARDORF: It's musical chair  
4 today. I'm sorry.

5 MR. LANG: I just had to prioritize getting the  
6 voter education manager. And then I'm going to get  
7 Michael in place and then assess what we need, what fits  
8 in that slot, and go.

9 COMMISSIONER BARDORF: Makes sense.

10 MR. LANG: And I contacted the finalists, the  
11 folks I interviewed for the deputy position and let them  
12 know where we are and let them know I will get back in  
13 touch with them shortly.

14 CHAIRPERSON BUSCHING: Okay. Any other  
15 questions or comments?

16 Okay. None. We'll go to Item No. 4,  
17 discussion of appointment of chairperson for 2006.

18 But before I do that, I should mention for the  
19 record that all the Commissioners are here except for  
20 Commissioner Detrick who undoubtedly is tied up with  
21 election duties with the City of Tucson.

22 Okay. Mr. Lang.

23 MR. LANG: As the Commission knows, we -- it's  
24 our obligation to -- or the Commission's obligation to  
25 elect a new Chair for 2006. Traditionally that's been

1 done in January, and that can be done again. Later on  
2 in the agenda, we're going to talk about the January  
3 meeting and it can be done then.

4 Ideally, it would be done in December, I think,  
5 based on timing, but we do not have a December meeting,  
6 so January will work.

7 So, it was placed on the agenda to get the  
8 discussion begun.

9 CHAIRPERSON BUSCHING: Okay. Commissioner  
10 Jolley.

11 COMMISSIONER JOLLEY: So, what -- let me see, I  
12 believe that last year in November we made a decision as  
13 to who our new Chair will be.

14 MR. LANG: Okay.

15 COMMISSIONER JOLLEY: Is there any difficulty  
16 with that?

17 MR. LANG: It's up to the Commission.

18 COMMISSIONER JOLLEY: Well, I would like to  
19 nominate Commissioner Busching once again. I think  
20 she's done a good job keeping us on track.

21 CHAIRPERSON BUSCHING: Thank you.

22 Is it appropriate to do an election  
23 today?

24 COMMISSIONER BARDORF: The only reservation I  
25 have is that Commissioner Detrick is not here. Oh, but

1       -- well, she may or may not want to have a say since  
2       she's graduating.

3               CHAIRPERSON BUSCHING: Graduating, I like that.

4               COMMISSIONER JOLLEY: To retirement.

5               COMMISSIONER SCARAMAZZO: Is it listed on the  
6       agenda as an appointment today? It just says discussion  
7       of the appointment,

8               MS. VARELA: Well, actually up above it says,  
9       "All matters on agenda may be discussed, considered and  
10      are subject to action by the Commission."

11              Yeah, I looked at that too. I think you will  
12      be okay if you decided to do it today.

13              CHAIRPERSON BUSCHING: Well there's been a  
14      motion. Is there a second?

15              COMMISSIONER BARDORF: I don't have a problem  
16      with it. I just think we should make sure that Kathy  
17      has an opportunity to say whether or not she wants to  
18      have a say. Just because -- if there were an urgency,  
19      then I wouldn't be holding it up. But, since we don't  
20      have an urgency -- I can't remember when our next  
21      meeting is.

22              COMMISSIONER JOLLEY: It's November 18th.

23              CHAIRPERSON BUSCHING: So, do you want to  
24      withdraw your motion?

25              COMMISSIONER JOLLEY: I'll withdraw my motion.

1                   CHAIRPERSON BUSCHING: All right. Any other  
2 discussion on the matter?

3                   COMMISSIONER BARDORF: Just that I think that  
4 we should, on the agenda for the next meeting, put  
5 specifically that it's going to be an election so she  
6 knows and everybody knows so we won't hold it up any  
7 further.

8                   CHAIRPERSON BUSCHING: Okay. Then we'll go to  
9 Item No. 5 on the agenda, discussion and possible  
10 approval of an additional Commission meeting in January  
11 of 2006.

12                   I actually put this on the agenda, because  
13 since we -- the next meeting is the middle of November,  
14 and the following meeting wasn't scheduled until the end  
15 of January, I thought just so people could clear their  
16 calendars ahead of time, and we do not rush to try to  
17 figure out something that we just go ahead and add a  
18 meeting. If there's no need for it, we can obviously  
19 cancel it then.

20                   So, have people had an opportunity to look at  
21 their calendars and see whether any or all of those  
22 dates work?

23                   Commissioner Jolley.

24                   COMMISSIONER JOLLEY: Well, the best date that  
25 works for me is January 13th.

1           CHAIRPERSON BUSCHING:   Okay.   Does that work?

2           COMMISSIONER SCARAMAZZO:   That works for me.

3           COMMISSIONER BARDORF:   Works for me.

4           CHAIRPERSON BUSCHING:   All right.   Do you want  
5   to make that into a motion?

6           COMMISSIONER JOLLEY:   I motion that if we need  
7   a meeting for January, that it be January 13th.

8           CHAIRPERSON BUSCHING:   Okay.

9           COMMISSIONER SCARAMAZZO:   I'll second that.

10          CHAIRPERSON BUSCHING:   It's been moved and  
11   seconded that if the January -- earlier January meeting  
12   is required, it be held on January 13th.

13                   Any other discussion?

14                   If not, the Chair will call for the question,  
15   all in favor say "aye".

16                   (Chorus of ayes.)

17          CHAIRPERSON BUSCHING:   Opposed, nay?

18                   The Chair votes aye.   Motion carries.

19                   Item No. 6, discussion and possible approval on  
20   the following rules:   A) Consideration of public comment  
21   and approval for proposed rule changes to  
22   R2-20-109(B) (1), allowing statewide candidates to file  
23   Excel spreadsheet containing the \$5 Contributor's  
24   Information in lieu of inputting the \$5 Contributor's  
25   Information into the campaign finance software.

1 Mr. Lang.

2 MR. LANG: Actually, our voter education -- I  
3 mean, our -- I'm sorry, our Campaign Finance Manager,  
4 Genevra Richardson, is going to discuss that.

5 CHAIRPERSON BUSCHING: Okay.

6 MS. RICHARDSON: If you remember at the August  
7 25th meeting, this was brought before the Commission  
8 from Secretary of State Brewer and the Commission  
9 approved the following language change on what you see.  
10 And we've had a sixty-day public comment period. We  
11 have not received any written public comments. So,  
12 today the Commission can take action or consider public  
13 comment.

14 CHAIRPERSON BUSCHING: Okay. In which case  
15 I'll open it up to the public and ask, is there anyone  
16 from the public wishing to speak to this matter?

17 Yes?

18 MS. LUBIN: Barbara Lubin, Clean Elections  
19 Institute. I spoke in favor of this rule change when  
20 the Secretary of State proposed it. And I just wanted  
21 to affirm, because I hadn't submitted written comments,  
22 that we are still in favor of this, of the change that  
23 you all have before you.

24 CHAIRPERSON BUSCHING: Okay. Appreciate that.

25 Yes?

1 MS. KLEIN: Barbara Klein with the League of  
2 Women Voters. And I would just like to say that we  
3 would really encourage you to vote for this change. We  
4 think that anything that eases the burden on the  
5 candidates in any way, while still maintaining the  
6 integrity of the law, is a good thing.

7 CHAIRPERSON BUSCHING: Thank you. Appreciate  
8 it. Any other comments?

9 Okay. Any discussion or questions by members  
10 of the Commission?

11 If not, the Chair will entertain a  
12 motion.

13 COMMISSIONER BARDORF: Madame Chair, I move  
14 that we approve the changes to Rule R2-20-109 as set  
15 forth in our materials.

16 COMMISSIONER SCARAMAZZO: Second that.

17 CHAIRPERSON BUSCHING: It's been moved by  
18 Commissioner Bardorf and seconded by Commissioner  
19 Scaramazzo that we approve the changes to Rule  
20 R2-20-109. Any further discussion?

21 If not, the Chair will call for the question,  
22 all in favor say "aye".

23 (Chorus of ayes.)

24 CHAIRPERSON BUSCHING: Opposed, nay?

25 The Chair votes aye. Motion carries.

1           Item 6 B, proposed exempt rulemaking amendments  
2           for substantive and technical changes to the following  
3           R2-20 Rules: 103, 104, 107, 206, 208, 214, 217, 231,  
4           702, 702.01, and 703.

5           Ms. Richardson, are you doing this as  
6           well?

7           MS. RICHARDSON: Okay. Yes. This is just  
8           rules that during the clean up of the '04 rule process  
9           and the five-year review, these rules were already  
10          approved by the Commission last year, but need to be  
11          noticed to the public properly. They've already been  
12          approved by the Commission and gone through that  
13          process, but we need to have it -- they were never  
14          finally published either. So, we need to have the  
15          Commission approve them, post them for a 60-day public  
16          comment, and then we can finalize them.

17          CHAIRPERSON BUSCHING: Okay.

18          MS. RICHARDSON: If you want to go through them  
19          step by step, I'll be happy to do that, but they've  
20          already gone through that discussion process.

21          CHAIRPERSON BUSCHING: All right.

22          COMMISSIONER JOLLEY: I have a question. It's  
23          just technical. I always thought that after a numerical  
24          spelling of a number, you use the number, the numerical  
25          number itself in parentheses.



1 CHAIRPERSON BUSCHING: Where are you?

2 COMMISSIONER JOLLEY: Page 2. It says, "seven  
3 days". I always thought the number seven came after  
4 seven. And where it says three commissioner members, it  
5 had the number three. Maybe I'm dating myself. It's  
6 been a long time since Funk and Wagnalls as an English  
7 class. So I don't know. I'm asking.

8 MS. RICHARDSON: During the rule process, the  
9 review and everything, I had an opportunity to meet with  
10 the rules person over at the Secretary of State's  
11 office. Any number under 10, has to be written out --  
12 or is it 10? Yeah -- and then over 10 has to be  
13 numerical.

14 COMMISSIONER JOLLEY: Okay. Very good.  
15 Answered my question.

16 Just one correction, and that's on Page 7 under  
17 letter "G". You need an E" to election. "An election  
18 to another office." It just says "lection".

19 MS. RICHARDSON: Okay.

20 CHAIRPERSON BUSCHING: Okay.

21 COMMISSIONER BARDORF: I had a question just  
22 for Mr. Lang I guess. I was thinking as I was reviewing  
23 this particular change to 206 which puts the authority  
24 in your position as opposed to the administrative  
25 counsel, and I'm assuming that's because we don't have

1       an administrative counsel, and as far as I know never  
2       have. And I remember when we were hiring for your  
3       position, when I saw the organizational chart, I was  
4       sort of surprised to see that there was that position on  
5       the org chart.

6               And I was just thinking, is that something  
7       where we could reallocate that position and have -- I  
8       guess more importantly, is that something that would be  
9       of interest to have another person on staff perhaps  
10      taking on different duties that will be of help to  
11      everyone else on the staff? And that was just a thought  
12      that occurred to me when I was reading this, if we're  
13      not going to have an administrative counsel, perhaps  
14      that opening should be something else to help everybody  
15      else in the office. Just an idea.

16             MR. LANG: Madame Chair, Commissioner Bardorf.  
17      That's actually a very good suggestion. Just for your  
18      information, we have had an administrative counsel at  
19      one brief period in the past.

20             COMMISSIONER BARDORF: Oh.

21             MR. LANG: But since that time, we haven't  
22      filled the position and don't anticipate filling the  
23      position.

24             That's something I've considered. Frankly,  
25      once we get the deputy director's position filled, we

1       have a problem, we don't have any office space for that  
2       position. That's been sort of a very real impediment to  
3       that position. That's something we're thinking about,  
4       Paula and I are working together on that, and so that's  
5       a strategy. But that is on the radar. So, thank you.

6               CHAIRPERSON BUSCHING: Okay. Any other  
7       questions or comments?

8               Is there anyone from the public that wishes to  
9       speak to this matter?

10              No.

11              COMMISSIONER BARDORF: I'm sorry, there was one  
12       other one that I wanted to discuss very briefly. The  
13       change to Rule 703, the last change which is Subsection  
14       D, this issue of if there's no documentation for direct  
15       expenditure, it needs to be repaid with personal monies.

16              Does that create any opportunity for sort of  
17       exceeding the spending limits? In other words, you  
18       could spend money and obtain goods, and then simply pay  
19       your campaign back with personal money, and then now you  
20       have the goods, but you're back to your original sum of  
21       money?

22              MR. LANG: Madame Chair, Commissioner Bardorf,  
23       my understanding is that you will still be subject to  
24       enforcement and this is simply an additional remedy.

25              COMMISSIONER BARDORF: I see. Okay.

1                   CHAIRPERSON BUSCHING: Okay. Any other  
2                   questions or comments?

3                   If not, the Chair will entertain a  
4                   motion.

5                   COMMISSIONER BARDORF: Madame Chair, I move we  
6                   authorize Ms. Richardson to authorize the rule changes  
7                   as set forth in Agenda Item 6, Sub B, be publicly  
8                   noticed and implemented.

9                   CHAIRPERSON BUSCHING: Is there a second?

10                  COMMISSIONER JOLLEY: I'll second that.

11                  CHAIRPERSON BUSCHING: It's been moved by  
12                  Commissioner Bardorf and seconded by Commissioner Jolley  
13                  that we continue the process of getting the rule  
14                  amendments approved as set forth in Agenda Item 6B.

15                  I like your shorthand way of doing it.

16                  Any further discussion?

17                  If not, the Chair will call for the  
18                  question, all in favor say "aye".

19                  (Chorus of ayes.)

20                  CHAIRPERSON BUSCHING: Opposed, nay?

21                  Chair votes aye. The motion carries.

22                  Item 7, discussion and possible action on the  
23                  following enforcement matters: A) MUR 04-0020, David  
24                  Gowan. Discussion and possible action on the outcome of  
25                  informal settlement conference between Commission

1 Representative Tracey Bardorf and David Gowan.

2 Ms. Bardorf.

3 COMMISSIONER BARDORF: We met with Mr. Gowan  
4 and his attorneys a couple of Fridays ago. They had  
5 asked for an opportunity to obtain the materials from  
6 Mr. Querard and be able to amend the reports to supply  
7 the required level of detail, and we agreed to that  
8 extension in the hope that the amended report will  
9 satisfy the reporting requirement and be able to dispose  
10 of the matter without going any further.

11 So, was it a 60-day extension?

12 MS. VARELA: 45 days.

13 COMMISSIONER BARDORF: We've given them 45  
14 days. And hopefully it won't take that long, but he  
15 also agreed to postpone the administrative hearing. And  
16 so -- and then if we get the amended reports, those will  
17 be subject to the Commission's approval.

18 CHAIRPERSON BUSCHING: Okay. Sounds good. So  
19 there's no action that we need to take?

20 COMMISSIONER BARDORF: Not yet.

21 CHAIRPERSON BUSCHING: All right. Then, we'll  
22 move to Item 7 B: MUR 04-0043, Peggy Toomey Hammann.  
23 Reconsideration of order.

24 Mr. Lang.

25 MR. LANG: Madame Chair and Commissioners, this

1 is a blast from the past. Last Commission meeting, the  
2 Commission approved this order and issued it; however,  
3 in drafting it, they noticed an error regarding the  
4 penalties. So, I've brought it back before you for your  
5 reconsideration and re-issuance of a new order with the  
6 proper penalties. In particular -- I'm not going to go  
7 into the whole order, because it's identical to the  
8 penalties you authorized.

9 The change is in Paragraph 10. As you know,  
10 the allegation is that Ms. Hammann failed to report the  
11 matching funds, both the receipt of those matching funds  
12 and how she -- how she disposed of them. The penalty is  
13 \$110 per day. Obviously, that would result in a penalty  
14 of many, many thousands of dollars.

15 However, under ARS 16-942(B), the penalty limit  
16 for such a failure is twice the amount of the  
17 expenditure contribution reported. In this case, that  
18 amount would be \$1,066.68. It's my recommendation to  
19 the Commission that they approve the order with that  
20 change.

21 I also should say, I believe Ms. Hammann -- she  
22 told me she would be here today and may want to speak to  
23 the Commission. She is here. Okay.

24 CHAIRPERSON BUSCHING: Mr. Lang, before I turn  
25 to the public, could you -- the overall penalties set

1       forth herein, is there a reason why you didn't total it?

2                   I mean --

3       MR. LANG: I think I did.

4       MS. VARELA: Page 3 at the top.

5       MR. LANG: Page 3, Paragraph 1. The total  
6       amount is \$3,573.68. And I apologize for not pointing  
7       that out to the Commission.

8       CHAIRPERSON BUSCHING: All right. Thank you.

9                   All right, any questions of Mr. Lang?

10       MR. LANG: Counsel has pointed out to me  
11       there's a typo on the bottom of Page 2. The order has  
12       the same sentence twice. So I would recommend that the  
13       Commission redact one sentence. Their choice of which  
14       one.

15       CHAIRPERSON BUSCHING: All right. Is there  
16       anyone from the public that wishes to speak to this  
17       matter?

18       MR. LANG: I just note for the record that Ms.  
19       Hammann is here. She's declined the opportunity.

20       CHAIRPERSON BUSCHING: Okay. All right. If  
21       not, then the Chair will entertain a motion.

22                   I guess before we do that, Mr. Lang. If Ms.  
23       Hammann is here and doesn't wish to speak, do you have  
24       any sense on whether she's agreeable to this, this  
25       revised penalty and whether we could just turn this into

1 a consent order or anything?

2 MR. LANG: She may want to speak to that,  
3 Madame Chair. But I did have a conversation with her  
4 yesterday, and while she is interested in a settlement,  
5 she has a number of justifications for the various  
6 allegations against her. And frankly, I told her that I  
7 felt the time to raise those had passed.

8 She also would, I think, would tell you that  
9 paying a fine of \$3,000 will be very difficult for her.  
10 So, I think she's interested in -- I'm not going to  
11 speak for her, I'm going to urge her to respond to my  
12 comments -- but I think she's interested in availing  
13 herself of an opportunity to have an informal settlement  
14 conference after the order is entered into with a member  
15 of the Commission.

16 CHAIRPERSON BUSCHING: Okay.

17 MS. HAMMANN: That's exactly what I wanted  
18 to --

19 CHAIRPERSON BUSCHING: Ms. Hammann, do you want  
20 to come forward and state your name?

21 MS. HAMMANN: I'm Peggy Toomey Hammann and I  
22 appreciate your time and consideration. I was going to,  
23 after this, request an informal settlement conference.

24 CHAIRPERSON BUSCHING: Okay. I appreciate  
25 that.



1 MS. HAMMANN: And I appreciate that, Mr. Lang.

2 Much of this is because I was not  
3 receiving notifications of any of these issues. Fed Ex  
4 was sent to the wrong address and I have not been  
5 communicating with the Commission.

6 CHAIRPERSON BUSCHING: Okay. Thank you. We  
7 appreciate your attendance, and, you know, obviously we  
8 regret any time we have to assess penalties and  
9 hopefully we can get this worked out.

10 MS. HAMMANN: Thank you.

11 CHAIRPERSON BUSCHING: Okay.

12 MS. VARELA: And if I may speak to that, I just  
13 want to, so we have it on the record, my understanding  
14 is that the Federal Express packages that were being  
15 sent to Ms. Toomey Hammann were being sent to a  
16 different address at her request.

17 So, I just, I don't want to leave that out  
18 there that the Commission thinks that staff is  
19 continually sending things to an address she knows she's  
20 not going to receive them at. I want to make that  
21 clear. At least my understanding is that Commission  
22 staff was requested by Ms. Hammann and she used the  
23 other address to receive the packages.

24 MS. HAMMANN: At one time I was out of town and  
25 requested it be sent to an address here in Arizona

1       because I was out of state at the time. I did not  
2       intend for that to be continual. I knew there was no  
3       one at my home to receive it. I had it sent to my  
4       mother-in-law's house, but she knew that and was  
5       prepared to receive the Fed Ex.

6               CHAIRPERSON BUSCHING: All right. Thank you.

7               Commissioner Jolley.

8               COMMISSIONER JOLLEY: Yes, I have a question of  
9       Mr. Lang. Mr. Lang, on Page 3 it states that, "The  
10      respondent shall pay a civil penalty in the total amount  
11      of \$3,573.68."

12              Now, is that different from the one on Page 2  
13      that says, "The appropriate penalty for this violation  
14      is \$1,056.68."

15              MR. LANG: Actually, Madame Chair and  
16      Commissioner Jolley, that is the order. As you can see,  
17      that's under the caption of final order. The final  
18      order is a combination of all the penalties. And in  
19      this case there are three separate penalties. And that  
20      number in the order represents the combination of those  
21      three separate penalties.

22              CHAIRPERSON BUSCHING: Okay. Any further  
23      discussion?

24              The Chair will entertain a motion.  
25      Commissioner Jolley.

1                   COMMISSIONER JOLLEY: Yes. I will motion --  
2 or, make a motion in the matter of MUR 04-0043, finding  
3 and fact of conclusion of law, that we assess a penalty  
4 to Ms. Peggy Toomey Hammann and the respondent shall pay  
5 a civil penalty in the total amount of \$3,576.68.

6                   CHAIRPERSON BUSCHING: Is there a second?

7                   COMMISSIONER SCARAMAZZO: I'll second.

8                   CHAIRPERSON BUSCHING: It's been moved by  
9 Commissioner Jolley and seconded by Commissioner  
10 Scaramazzo that the order and notice of appealable  
11 agency action that assesses a penalty of \$3,576.68 be  
12 approved.

13                   Any further discussion? Mr. Lang.

14                   MR. LANG: I don't know if this is appropriate  
15 now. We have a service address on the order and I would  
16 just like Ms. Hammann, since she's here, to confirm the  
17 address she would like this order to be sent to.

18                   MS. HAMMANN: Can I pick it up here today while  
19 I'm here and save the State \$24 in Fed Ex expenses?

20                   CHAIRPERSON BUSCHING: Sure. And we'll clarify  
21 the address at the same time. Okay.

22                   MR. LANG: Thanks.

23                   CHAIRPERSON BUSCHING: Any further comments?

24                   If not, the Chair will call for the  
25 question, all in favor say "aye".

1 (Chorus of ayes.)

2 CHAIRPERSON BUSCHING: Opposed, nay?

3 Chair votes aye. Motion carries.

4 Mr. Lang, we heard that Ms. Hammann will want a  
5 settlement conference. Is it appropriate now that  
6 you're a part of this for you to do it, or do you want a  
7 Commission representative to do it?

8 Do we need that on a separate agenda or where  
9 are we on all of that?

10 MR. LANG: The order -- I may need some help  
11 from Diana on the technicalities for this -- the order  
12 still needs to be signed by the Chair. Once the order  
13 has been signed, it advises Ms. Hammann that she has a  
14 right to appeal, she has a right to an informal  
15 settlement conference.

16 Since she's already indicated that she would  
17 like that, I see no reason why the Board -- oh, because  
18 it's not on the agenda.

19 MS. VARELA: Because it's not on the agenda.

20 MR. LANG: Right.

21 MS. VARELA: We can put it on the next agenda  
22 and that way we will --

23 MR. LANG: That there's --

24 MS. VARELA: Yeah, I don't think that comes  
25 within the scope of what was -- what was noticed on the

1 agenda today. But the Commission has a meeting in two  
2 weeks and that will be enough time to designate a  
3 Commission representative.

4 MR. LANG: We'll certainly put it on the  
5 agenda.

6 CHAIRPERSON BUSCHING: All right. Thank you.

7 Item No. 7 C, MUR 04-0030, Jesse  
8 Hernandez. Discussion and possible action on informal  
9 settlement agreement with external investigative  
10 consultant.

11 Mr. Lemon, welcome.

12 MR. LEMON: Good morning, I am pleased to  
13 report we have finally gotten to the bottom of the  
14 Hernandez case. And let me make just a few points.  
15 After all of the investigation, it is quite apparent  
16 that Mr. Hernandez did not know what to do or how to do  
17 it when it came to the campaign accounting and  
18 reporting. He relied on his treasurers to do that.

19 His first treasurer quit. There have been  
20 suggestions that the treasurer had a bi-polar disorder  
21 and I think Mr. Hernandez was not aware of the mess that  
22 was initially made. It took him some time to find a  
23 replacement and so that led largely to the mess.

24 Now, when the -- when the Commission asked for  
25 more study, we engaged Miller Allen to do a specific

1       analysis of bank activity versus campaign financing  
2       reports. We have received that analysis and a copy has  
3       been furnished to each of you. It's quite clear from  
4       the work done that the candidate paid amounts late, way  
5       late. But, it's also clear that the amounts paid were  
6       for bills directly related to the campaign. There was  
7       no improper spending. The improprieties came with  
8       accounting and reporting.

9               I have met with Mr. Hernandez. I've gone  
10       through the auditor's report. I've discussed with him  
11       what went on. And I've come to an agreement with him  
12       that he would repay the \$125 in un-spent funds that  
13       remains. He holds a cashier's check for that amount.

14              And in addition, he would pay to the fund the  
15       sum of \$1,065. That is money that was spent on the  
16       campaign but was not reported on campaign finance  
17       reports. So, the total is \$1,190 and some change.

18              I particularly want to recommend that  
19       settlement, because it seems to me it is similar to the  
20       Commission's order in the Murchison case. Where  
21       Murchison overspent and he paid a sum equal to the  
22       overspending as a civil penalty for the violation -- if  
23       the violation had occurred there.

24              In this case, the \$1,065 was indeed spent on  
25       the campaign but not reported, and the candidate has

1       agreed to pay that amount. That amount is reflected in  
2       the Miller Allen report.

3               So, that's -- that is my -- my recommendation  
4       to get this case behind us. I would be happy to answer  
5       any questions.

6               CHAIRPERSON BUSCHING: Are there any questions  
7       of Mr. Lemon?

8               Is there anyone from the public that wishes to  
9       speak to this matter?

10              If not, the Chair will entertain a  
11       motion.

12              COMMISSIONER BARDORF: I move that we approve  
13       the settlement agreement in MUR 04-0030 as presented to  
14       us by Mr. Lemon.

15              COMMISSIONER SCARAMAZZO: Second.

16              CHAIRPERSON BUSCHING: It's been moved by  
17       Commissioner Bardorf and seconded by Commissioner  
18       Scaramazzo that we approve the settlement agreement in  
19       the Jesse Hernandez matter as presented by Mr. Lemon.

20              Any further discussion?

21              If not, the Chair will call for the question,  
22       all in favor say "aye".

23              (Chorus of ayes.)

24              CHAIRPERSON BUSCHING: Opposed, nay?

25              The Chair votes aye. Motion carries.

1                   COMMISSIONER BARDORF: I have a question  
2                   related to the penalties, and one of the three of you  
3                   maybe knows the answer. When penalties are assessed, I  
4                   notice there's no deadlines in terms of paying them.

5                   MR. LEMON: They have to pay in 30 days after  
6                   the agreement.

7                   COMMISSIONER BARDORF: They have 30 days?

8                   MR. LEMON: Yeah.

9                   CHAIRPERSON BUSCHING: Okay. That was the  
10                  question. Maybe it is here. Here we go, Page 3.

11                  Okay. Moving on to Item No. 8, legal report  
12                  from Assistant Attorney General Diana Varela.

13                  MS. VARELA: Thank you, Commissioners.  
14                  Commissioner Busching had asked that I give a brief  
15                  update on the redistricting case. And I can do that. I  
16                  can give you a very brief update. I have to tell you  
17                  that the most recent decision by the Court of Appeals is  
18                  75 pages and I have not read it. I can give you a very  
19                  brief summary, but the bottom line is the Court of  
20                  Appeals has remanded it to the trial court to look at  
21                  the legislative lines.

22                  Now, my understanding is that the Arizona  
23                  Minority Coalition has announced it's going to file a  
24                  petition for review in the Supreme Court. So,  
25                  basically, it's very much up in the air whether the



1 Supreme Court is going to grant the petition for review.  
2 If it does grant it, how long is it going to take to  
3 decide? My recollection is that oral argument in the  
4 Court of Appeals was in April and this decision just  
5 came out within the last couple weeks.

6 So, I mean, obviously they're very complicated  
7 issues and the courts are aware that these are important  
8 and pressing issues. So, very much up in the air.

9 What could happen is that there will be new  
10 lines. But right now we have the 2004 -- the lines that  
11 were used in 2004 that have been pre-cleared, and it's  
12 also possible that those will be used. So, bottom line  
13 is it's very much up in the air.

14 CHAIRPERSON BUSCHING: Okay.

15 MS. VARELA: And the next thing is on the David  
16 Smith matter. We had a hearing on Monday. We had filed  
17 -- well, let me back up.

18 Mr. Smith had filed a Special Action Complaint  
19 back in September before he had filed his Motion For  
20 Rehearing Or Review in front of the Commission. And  
21 actually that was an issue that Commissioner Busching  
22 had raised, whether the Commission still had position to  
23 consider that.

24 The Commission denied the Motion For Rehearing  
25 Or Review. The Attorney General's Office then filed a

1       Petition for Writ of Quo warranto on August 20th,  
2       basically asking the court for an order removing Mr.  
3       Smith from office.

4               We filed a Motion to Consolidate those two  
5       actions since obviously they're dealing with exact same  
6       issues. They did not object to that and that Motion to  
7       Consolidate was granted so we are now in front of Judge  
8       Mark Aceto in the southeast court.

9               We filed a Motion to Dismiss, a copy of which  
10      you have in the packet I believe. We then had a very  
11      short hearing on Monday. When we had filed our petition  
12      for the writ, we had also filed an Application For Order  
13      To Show Cause. So, the judge assigned in that case had  
14      set a return hearing, just a 15-minute hearing for  
15      Monday October 31st. This judge said we're going to  
16      take both of the cases and consolidate them, but I'm  
17      going to have the hearing as well so we can kind of sort  
18      out what's going on.

19              They have filed a Motion to Quash the Petition  
20      for Writ of Quo Warranto. They filed a First Amended  
21      Special Action Complaint. So, there's a number of  
22      pleadings out there. What the court ordered on Monday  
23      is that all of the parties will file responses to the  
24      respective pleadings they need to respond to by November  
25      18th. Then the parties will file their replies no later

1           than November 30th. And then he's going to have a  
2           hearing on the Order to Show Cause, their Motion to  
3           Quash, and our Motion to Dismiss on December 6th. So,  
4           that's where we are. We are busy.

5                   CHAIRPERSON BUSCHING: Hot and heavy in  
6           litigation.

7                   MS. VARELA: Yes. Yes.

8                   CHAIRPERSON BUSCHING: Mr. Lang.

9                   MR. LANG: Thank you, Madame Chair. The  
10          Commission is not a party in the quo warranto action,  
11          but because the matter has been consolidated, the  
12          Commission is a party in this matter.

13                  MS. VARELA: Right.

14                  MR. LANG: So, we'll continue to be a party  
15          until the matter is resolved. The Commission will  
16          continue to be a party.

17                  MS. VARELA: Right.

18                  CHAIRPERSON BUSCHING: What, if you know, is  
19          the background of the judge?

20                         Do you know anything about him?

21                  MS. VARELA: I do not know. I don't know him.

22                  CHAIRPERSON BUSCHING: Any questions of Ms.  
23          Varela?

24                  COMMISSIONER JOLLEY: I just need some  
25          clarification. When you said the judge is southeast?

1 MS. VARELA: It's in the Maricopa County  
2 Superior Court, but there is a physical location in Mesa  
3 and --

4 COMMISSIONER JOLLEY: I see.

5 MS. VARELA: -- and Mr. Smith is represented by  
6 David Abney whose law office is in Mesa, so it's more  
7 convenient for him. And he had filed his special  
8 action, even though he had not served it, he had filed  
9 it first.

10 When you make a motion to consolidate, they're  
11 usually consolidated under the first filed action.

12 COMMISSIONER JOLLEY: So, this is actually the  
13 Superior Court of Maricopa County?

14 MS. VARELA: Yes, uh-huh.

15 COMMISSIONER JOLLEY: Are they done by  
16 districts rather than at large?

17 COMMISSIONER BARDORF: If there's an attorney  
18 in Surprise, you will end up in Northwest. Just to kind  
19 of move people from downtown.

20 MS. VARELA: When we filed a Petition For Writ  
21 of Quo Warranto, we were assigned to Judge Colin Cambell  
22 who was moved to downtown. When we moved to  
23 consolidate, we were aware if it was granted it would  
24 stay with Judge Aceto.

25 COMMISSIONER BARDORF: Sometimes the party

1       resident is in one of the other parts of town just to  
2       get it out of here.

3               COMMISSIONER JOLLEY: The reason I ask is I'm  
4       from rural Arizona and everything is done in one little  
5       courthouse, one little community.

6               MS. VARELA: Oh, yeah.

7               COMMISSIONER JOLLEY: Thank you.

8               COMMISSIONER BARDORF: That's the way it was  
9       until just a few years ago. They just started farming  
10      it out, right, in the last couple of years?

11              MS. VARELA: I don't know.

12              CHAIRPERSON BUSCHING: Was the special action  
13      ever served or was it --

14              MS. VARELA: They did serve it. It was served  
15      -- we had filed the petition on, I believe, the 20th and  
16      they served it the next day.

17              CHAIRPERSON BUSCHING: Okay. Any other  
18      questions of Ms. Varela?

19              If not, Item No. 9, call for public comment.  
20      This is the time for consideration and discussion of  
21      comments and complaints from the public. Action taken  
22      as a result of public comment will be limited to  
23      directing staff to study the matter or rescheduling the  
24      matter for further consideration and decision at a later  
25      date, or responding to criticism.

1                   Is there anyone from the public that wishes to  
2           speak?

3                   Not today.

4                   I guess so we'll move to Item 10. Is there a  
5           motion for adjournment?

6                   COMMISSIONER JOLLEY: I will so move that we  
7           adjourn.

8                   CHAIRPERSON BUSCHING: Second.

9                   COMMISSIONER BARDORF: Second.

10                  CHAIRPERSON BUSCHING: It's been moved by  
11           Commissioner Jolley and seconded by Commissioner Bardorf  
12           that we adjourn.

13                  All in favor say "aye".

14                  (Chorus of ayes.)

15                  CHAIRPERSON BUSCHING: Opposed, nay?

16                  Chair votes aye. Motion carries.

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18                  (Whereupon the meeting concludes at 10:19 a.m.)

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C E R T I F I C A T E

I, Angela Furniss Miller, Certified Court Reporter, do hereby certify that the foregoing pages numbered 1 through 38, inclusive, constitute a full and accurate printed record of my stenographic notes taken at said time and place, all done to the best of my skill and ability.

DATED, at Phoenix, this 18th day of November, 2005.

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Angela Furniss Miller, RPR  
Certified Reporter (AZ50127)